IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 530 OF 2005

Shri Namdeo Narayan Jadhav and ors. .. Appellants

Vs.

Shri Narayan Keshav Joshi and anr. .. Respondents

Mr. G.S. Godbole for appellants.
Mr. A.V. Anturkar with Ms. Vinita Bakre Shastry for Respondent Nos.1 and 2.
Mr. S.S. Kanetkar for Respondent Nos.3 and 4.

CORAM: B.H. MARLAPALLE, J.

Date : October 20, 2005.

P.C.:

1. This appeal arises from the order dated 29/3/2005 passed by the learned Joint Civil Judge, Senior Division at Pune allowing the application for temporary injunction filed in Special Civil Suit No.152 of 2003.

2. The appellants came to be impleaded as defendants in the suit filed by the present respondent no.1 and on his demise the present respondent nos.1A to 1C have been brought on record as the LRs. The respondent no.2 has purchased the suit property during

the pendency of the suit. The appellant nos.1 and 2 claimed that they were the tenants on the suit land for more than 30 years and the plaintiff no.1 Narayan Keshav Joshi, who was the owner of the suit land, had executed Power of Attorney in their favour and pursuant to the said Power of Attorney dated 8/10/2002 registered on 9/10/2002 they had signed the agreement for sale in favour of defendant nos.3 and 4 on 14/10/2002. It is apparent that defendant no.4 is the son of defendant no.1 and defendant no.3 is the son of defendant no.2 and thus the defendant nos.1 and 2 claiming to be the tenants over the suit land and the Power of Attorney holders of plaintiff no.1 sought to alienate the land in favour of their respective sons by agreement of sale dated 14/10/2002. The plaintiffs, therefore, approached the trial court by filing Special Civil Suit No.152 of 2003 and prayed for declaration that the Power of Attorney dated 8/10/2002 and the agreement for sale dated 14/10/2002 be declared as void, illegal and not binding on them. They also prayed for an order of perpetual injunction against the defendant nos.1 and 2 from performing any act on the basis or in pursuance of the Power of Attorney dated 8/10/2002 and a further perpetual

injunction against all the defendants from creating any third party interest against the suit land and from disturbing the plaintiffs' possession over the said land. By the impugned order dated 29/3/2005 the defendant nos.1 and 2 have been restrained from performing any act on the basis and in pursuance of Power of Attorney dated 8/10/2002 and all the defendants have been restrained from creating any third party interest in the suit property and from disturbing the possession of the plaintiffs over the said land.

3. Mr. Godbole, the learned counsel for the appellants, by referring to the statements of Plaintiff No.1 recorded before the revenue authorities submitted that the landlord himself has accepted the possession of defendant nos.1 and 2 over the suit land and they were cultivating the said land for years together. When the agreement of sale was signed they were in possession of the suit land and, therefore, they could not have been restrained from disturbing the possession of the plaintiff no.1 who was not in possession of the suit land at the relevant time.

4. The suit land was a joint family property of the plaintiff no.1 and his brothers. The tenancy of the defendant nos.1 and 2 was denied by the plaintiff no.1 and, therefore, they had filed an application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948 before the Tahsildar, Khed which came to be registered as Tenancy Case No.2 of 1991. This application was rejected by the Tahsildar on 28/2/1999. The appellant no.1 and his brothers filed Tenancy Appeal No.11 of 1999 and the SDO, Junner Division remanded the Tenancy Application to the Tahsildar vide his order dated 30/7/2001. After remand, the Tahsildar again rejected the Tenancy Application on 1/11/2003. The appellant nos.1 and 2 have filed Tenancy Appeal No.96 of 2003 before the SDO, Khed and the said appeal is pending. Thus, as at present, there is no order in favour of the appellant nos.1 and 2 upholding their tenancy claim over the suit land. The 7x12 extracts which have been placed on record in respect of the suit land do not show the name of the appellant nos.1 and 2 as tenants/cultivators of the land and on the contrary, the entries show self cultivation of the landlord

over the suit lands located in Gat Nos.72, 73, 74 and 112. Even in the Power of Attorney dated 8/10/2002 the share of the plaintiff no.1 has not been clearly earmarked when it is known the suit land is a joint family property of the plaintiff no.1 and his brothers. Similarly, in the agreement for sale dated 14/10/2002 the agricultural land coming to the share of the plaintiff no.1 has not been clearly demarcated. The plaintiff no.1 alleged before the trial court that he being an old man, impaired in his vision as well as mental faculties, the appellant nos.1 and 2 played fraud and got the Power of Attorney executed. He also alleged that they misrepresented and took him to the Sub Registrar's Office to get the said Power of Attorney registered on 9/10/2002.

5. The trial court rejected the contentions of defendant nos.1 and 2 regarding their possession over the suit lands and it accepted that the plaintiff no.1 was, prima facie, in possession of the suit lands. It also noted that the agreement for sale dated 14/10/2002 did not indicate that defendant nos.1 and 2 had handed over the possession of the suit lands to defendant nos.3 and 4. As per the trial court the

Power of Attorney allegedly executed by plaintiff no.1 was suspicious taking into consideration his age and the physical impairments. The statements of the plaintiff no.1 recorded before the revenue authorities and relied upon by Mr.Godbole cannot support the claim of possession when the application filed under Section 70(b) of the Tenancy Act has been decided against the defendant nos.1 and 2 and their appeal is presently pending before the SDO. In these obtaining circumstances, no fault could be found with the view taken by the trial court and in passing the impugned order of temporary injunction against the defendants. The said order is, therefore, required to be confirmed by dismissing the appeal.

6. Hence the appeal is dismissed in limine.

(B.H. Marlapalle,J.)